

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL  
INSTRUMENTS ANTITRUST LITIGATION

MDL No. 2262  
Master File No. 1:11-md-2262-NRB  
ECF Case

THIS DOCUMENT RELATES TO:

CHARLES SCHWAB BANK, N.A., ET AL.,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, ET AL.

Defendants.

**ORAL ARGUMENT REQUESTED**

SCHWAB MONEY MARKET FUND, ET AL.,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, ET AL.,

Defendants.

SCHWAB SHORT-TERM BOND MARKET  
FUND, ET AL.,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, ET AL.,

Defendants.

MAYOR AND CITY COUNCIL OF BALTIMORE,  
ET AL.,

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, ET AL.,

Defendants.

METZLER INVESTMENT GMBH, ET AL.,

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, ET AL.,

Defendants.

GELBOIM, ET AL.,

Plaintiffs,

v.

CREDIT SUISSE GROUP AG, ET AL.,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF  
BARCLAYS BANK PLC'S MOTION TO DISMISS**

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Barclays Bank PLC (“Barclays”) submits this memorandum of law in support of its motion to dismiss the amended complaints filed by various subsidiaries, affiliates, and funds related to Charles Schwab & Co., Inc.<sup>1</sup> and the amended consolidated class action complaints<sup>2</sup> filed in this action (the “Action”).

Barclays joins and incorporates by reference herein all of the arguments set forth in (1) the Memorandum of Law in Support of Defendants’ Motion to Dismiss Antitrust Claims (“Antitrust Memorandum”), and (2) the Memorandum of Law in Support of Defendants’ Motion to Dismiss the Schwab Plaintiffs’ Amended Complaints, both filed on this date in this Action.<sup>3</sup> In addition, Barclays joins and incorporates herein by reference the arguments set forth in Sections I, II,<sup>4</sup> III.B, and IV in the Memorandum of Law in Support of Defendants’ Motion to

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<sup>1</sup> The *Schwab* complaints consist of: Am Compl., *Charles Schwab Bank N.A. v. Bank of Am. Corp.*, Apr. 30, 2012; Am. Compl., *Schwab Money Market Fund v. Bank of Am. Corp.*, Apr. 30, 2012; Am. Compl., *Schwab Short-Term Bond Market Fund v. Bank of Am. Corp.*, Apr. 30, 2012.

<sup>2</sup> The amended consolidated class action complaints consist of: Consol. Am. Compl., *Mayor and City Council of Baltimore v. Credit Suisse Grp. AG*, Apr. 30, 2012; Am. Consol. Compl., *Metzler Inv. GMBH v. Credit Suisse Grp. AG*, Apr. 30, 2012; First Am. Class Action Compl., *Gelboim v. Credit Suisse Grp. AG*, Apr. 30, 2012.

<sup>3</sup> Barclays understands Section II of the Antitrust Memorandum to argue that the BBA’s USD LIBOR setting process is not itself a competitive process and, given that the amended complaints allege only participation in the BBA’s process and certain individual motivations, that the amended complaints fail to state a claim for relief under Section 1 of the Sherman Act, 15 U.S.C. § 1, with which Barclays agrees.

<sup>4</sup> Barclays joins Defendants’ argument that “[t]he CEA has no extraterritorial application” (*see* Section II of Defendants’ Memorandum of Law in Support of Defendants’ Motion to Dismiss the Exchange-Based Plaintiffs’ Claims) only to the extent that *private* litigants are precluded under *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010), from advancing CEA claims extraterritorially.

Dismiss the Exchange-Based Plaintiffs' Claims, filed on this date in this Action. Barclays does not join Section III.A of this memorandum of law.<sup>5</sup>

Respectfully submitted,

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<sup>5</sup> On June 27, 2012, Barclays announced settlements with the Financial Services Authority, the U.S. Commodity Futures Trading Commission, and the U.S. Department of Justice relating to investigations concerning submissions by Barclays and other panel members to the bodies that set various interbank offered rates, such as the London Interbank Offered Rate ("LIBOR") and the Euro Interbank Offered Rate ("EURIBOR"). In addition, Barclays announced that it has been granted conditional leniency from the Antitrust Division of the Department of Justice in connection with potential U.S. antitrust law violations with respect to financial instruments that reference EURIBOR, which is not the subject of Plaintiffs' claims in this action. For the purposes of this motion, Barclays does not join any statements in any of the above-mentioned memoranda of law to the extent those statements could be construed to contradict any of the admitted findings made in connection with the aforementioned settlements.